

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 17, 1999**

1

MISC-ORDER

99-04 BY THE COURT

Associate Justice Coleman A. Blease is appointed to serve as Acting Presiding Justice to discharge the duties described in Rules 75, 76, 77 and 78 of the California Rules of Court during the absence of the Presiding Justice from the court for the period of May 21, 1999, through May 24, 1999, or until his return. (See Cal. Const. Art 6, Sec. 3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

Dated: May 17, 1999

SCOTLAND, P.J.

At 9:30 a.m., the court met in the Library & Courts Building to begin it's court calendar session.

PRESENT: SIMS, Acting Presiding Justice
DAVIS, Associate Justice
RAYE, Associate Justice

Bailiff: Rios.
Calendar called.

Crim. THE PEOPLE
No. v.
C028319 JEFFREY PATTERSON

Cause called. Brian A. Wright, court appointed counsel argued for Defendant-Appellant. Eric Brunkal, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 17, 1999 CONTINUED**

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At 9:54 a.m., court recessed. At 9:56 a.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Callahan, and Associate Justice Raye.

Civil RAY FLADEBOE LINCOLN-MERCURY, INC.
No. v.
C028067 NEW MOTOR VEHICLE BOARD
 FORD MOTOR COMPANY, ETC.

Cause called. Judy H. Hersher, of Downey, Brand, Seymour & Rohwer argued for Real party in interest-Respondent. Richard K. Sueyoshi, of Downey, Brand, Seymour & Rohwer appeared for Real party in interest-Respondent. Cause submitted. (Consolidated with C028849)

Civil FORD MOTOR COMPANY etc.
No. v.
C028849 NEW MOTOR VEHICLE BOARD, ETC.

Cause called. A. Albert Spar, of Parker , Milliken, Clark, O'Hara & Samuelian argued for Real party in interest-Respondent. Judy H. Hersher, of Downey, Brand Seymour, & Rohwer argued for Plaintiff-Appellant. Richard K. Sueyoshi, of Downey, Brand, Seymour & Rohwer appeared for Plaintiff-Appellant. Cause submitted. (Consolidated with C028067)

At 10:42 a.m., court recessed. At 10:46 a.m., court reconvened with the same panel except Associate Justice Raye in place of Associate Justice Callahan.

Civil GHANSHYAM PATEL et al.
No. v.
C025518 RULOBO ENTERPRISES, INC.

Ghanshyam Patel argued for Himself in Pro Per as Plaintiff-Appellant. Virbala Patel appeared for Himself in Pro Per as Plaintiff-Appellant. Kenny N. Giffard argued for Defendant-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 17, 1999 CONTINUED**

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At 11:09 a.m., court recessed. At 11:11 a.m., court reconvened with the same panel except Acting Presiding in place of Acting Presiding Justice Sims.

Crim. THE PEOPLE
No. v.
C028108 DAVID RAYMOND GATES

Bonnie M. Ross, court appointed counsel argued for Defendant-Appellant. John G. McLean, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 11:31 a.m., court recessed. At 11:34 a.m., court reconvened with the same panel except Presiding Justice Scotland in place of Acting Presiding Justice Davis.

Civil In re DARNELL W., a Person Coming Under the Juvenile Court Law.
No. THE PEOPLE
C029823 v.
DARNELL W.

Cause called. Judith Reynolds, court appointed counsel argued for Defendant-Appellant. Julie A. Hokans, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 12:07 p.m., court recessed. At 2:00 p.m., court reconvened with Acting Presiding Justice Sims, Associate Justice, and Associate Justice Raye.

Civil NEVADA COUNTY COUNCIL, ETC. et al.
No. v.
C028519 PHILADELPHIA INDEMNITY INSURANCE COMPANY

Cause called. Raymond C. Oleson argued for Plaintiffs-Appellants with additional citations. Karen A. Reardon, of Reardon, Golinkin & Reed argued for Defendant-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 17, 1999 CONTINUED**

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At 2:30 p.m., court recessed. At 2:34 p.m., court reconvened with the same panel except Acting Presiding Justice Blease in place of Acting Presiding Justice Sims.

Civil HAROLD R. FARROW et al.
No. v.
C026090 OMER L. RAINS

Cause called. John F. Mounier, Jr. argued for Defendant-Appellant-X-Respondent. Geoffrey Burroughs, of Weintraub, Genshlea & Sproul argued for Plaintiffs-Respondent-X-Appellants. Cause submitted.

At 3:01 p.m., court recessed. At 3:03 p.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Callahan, and Associate Justice Hull.

Crim. THE PEOPLE
No. v.
C027606 JEFFERY AARON ERICKSON

Cause submitted. Raymond L. Brosterhous II, Deputy Attorney General argued for Plaintiff-Appellant-X-Respondent. Jerry D. Whatley, court appointed counsel argued for Defendant-Respondent-X-Appellant. Cause submitted.

Court recessed at 3:36 p.m., until 9:30 a.m., Tuesday, May18, 1999.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
MONDAY, MAY 17, 1999 CONTINUED**

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Civil GAYE WELCH-BROWN (Not for Publication)
No. v.
C024958 PAIGE VORHIES et al.
Civil GAYE WELCH-BROWN
No. v.
C025979 STATE CONTROLLER'S OFFICE et al.
Civil GAYE WELCH-BROWN (Not for Publication)
No. v.
C027153 STATE CONTROLLEERS'S OFFICE et al.
 The appeal is dismissed.

NICHOLSON, J.

We concur: BLEASE, Acting .J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030615 ROOSEVELT LORENZO TONEY
 The appeal is dismissed.

NICHOLSON, J.

We concur: BLEASE, Acting P.J.
 CALLAHAN, J.

Civil OZELLA FYE HALEY et al.
No. v.
C029377 DOW LEWIS MOTORS, INC et al
 BY THE COURT:

Respondents' petition for rehearing is granted. The opinion filed on
April 20, 1999, is vacated.

Dated: May 18, 1999

BLEASE, Acting P.J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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TUESDAY, MAY 18, 1999

At 9:30 a.m., the court met in the Library & Building for a continuation of court calendar session.

PRESENT: BLEASE, Acting Presiding Justice
 RAYE, Associate Justice
 CALLAHAN, Associate Justice

Bailiff: Palmer.
Calendar called.

Crim. THE PEOPLE
No. v.
C028517 GLEN WARREN WOODHOUSE

Cause called. Steven Schorr, court appointed counsel argued for Defendant-Appellant. Anthony L. Dicce, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 9:50 a.m., court recessed. At 9:51 a.m., court reconvened with Acting Presiding Justice Blease, Associate Justice Morrison, and Associate Justice Hull.

Civil PLACER RANCH, INC.
No. v.
C029206 WESTERN PLACER WASTE, ETC.

Cause called. Scott Hammel, of Litigation Advocates Group argued for Plaintiff-Appellant. Timothy M. Taylor, of DeCuir & Somuch argued for Defendant-Respondent. Roberta L. Larson, of DeCuir & Somuch appeared for Defendant-Respondent but did not argue. Cause submitted.

Civil TIMOTHY RANK et al.
No. v.
C029721 KENJI'S LANDSCAPE

Cause called. C. Scott Tocher, of Bolling, Walter & Gawthrop argued for X-Complainant-Appellant. Carolyn R. Breitreutz, of Lea & Arruti argued for X-Defendant-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, MAY 18, 1999 CONTINUED**

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At 10:50 a.m., court recessed. At 10:52 a.m., court reconvened with the same panel except Associate Justice Davis in place of Associate Justice Morrison.

Civil	LEANNE JESSIE
No.	v.
C029410	WORKERS' COMPENSATION APPEALS BOARD et al.

Cause called. John E. Cogan, Jr., of W. Howard Wells, Inc. & Associates argued for Petitioner. William R. Majernik, Jr. of McMurchie, Brandenburger, Weill, Lenahan & Lee argued for Respondent Cassidy Family Restaurant et al. Cause submitted.

At 11:35 a.m., court recessed. At 2:00 p.m., court reconvened with Acting presiding Justice Blease, Associate Justice Raye, and Associate Hull.

Crim.	THE PEOPLE
No.	v.
C027160	BILL LEE COX

Cause called. Tamara P. Holland, court appointed counsel argued for Defendant-Appellant. Howard E. Moseley, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
TUESDAY, MAY 18, 1999 CONTINUED**

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At 2:21 p.m., court recessed. At 2:24 p.m., court reconvened with the same panel except Associate Justice Morrison in place of Associate Justice Hull.

Civil AMBER GARCIA, a Minor, etc. et al.

No. v.

C028902 SNAP PRODUCTS, INC. et al.

TECHNICAL CHEMICAL COMPANY

Cause called. Michael K. Johnson, of Lewis, D'Amato, Brisbois, & Bisgaard argued for Defendant-X-Defendant-Appellant. Kent M. Luckey, of Matheny, Sears Linkert & Long argued for Defendants-X-Complainants-Respondents. Eric Weisel, of Matheny, Sears Linkert & Long appeared for Defendants-X-Complainants-Respondents but did not argue. Ralph Zappala, of Lewis, D'Amato, Brisbois & Bisgaard argued for Defendant-X-Defendant-Appellant. Dugan Barr, of Dugan & Associates argued for Plaintiffs-Respondents Bonita Barbour etc. et al. Cause submitted.

Civil JOSEPHINE ROJAS et al.

No. v.

C028963 DEPARTMENT OF SOCIAL SERVICES

Cause called. Michael K. Tcheng, of Misciagna & Colombatto argued for Plaintiffs-Appellants. Barbara Haukedalen, Deputy Attorney General argued for Defendant-Respondents. Connie Skow, Staff Attorney appeared for Defendant-Appellant but did not argue. Cause submitted.

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Court recessed at 4:16 p.m., until 9:30 a.m., Wednesday, May 19, 1999.

Crim.	THE PEOPLE	(Not for Publication)
No.	v.	
C030815	EDWARD BRIAN BLACK	
	The judgment is affirmed.	
		RAYE, J.
	We concur:	BLEASE, Acting P.J.
		MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029414 ROBERT EARL BROWNE

Defendant's restitution fine is reduced to \$1,425. The trial court is directed to amend the abstract of judgment accordingly and to send a copy of the amended abstract to the Department of Corrections. As modified, the judgment is affirmed.

RAYE, J.

We concur: MORRISON, J.
CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, MAY 19, 1999**

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At 9:31 a.m., the court met in the Library & Courts Building for a continuation of it's court calendar session.

PRESENT: DAVIS, Acting Presiding Justice
 MORRISON, Associate Justice
 CLALLAHAN, Associate justice

Bailiff: Rios.
Calendar called.

Crim. THE PEOPLE
No. v.
C029506 KELLY LEE SCHERER

Cause called. Meredith J. Watts, court appointed counsel argued for Defendant-Appellant. Erik Brunkal, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Crim. THE PEOPLE
No. v.
C029857 SAMUEL ALLEN HEATH

Cause called. Kathryn E. Collier, Deputy State Public Defender argued for Defendant-Appellant. Erik Brunkal, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 10:17 a.m., court recessed. At 10:19 a.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Morrison, and Associate Justice Chalky.

Crim. THE PEOPLE
No. v.
C029794 ALEXANDER LEON WINDHAM

Cause called. Kristine Byron-White, Deputy State Public Defender argued for Defendant-Appellant. Wanda Hill Rouzan, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNESDAY, MAY 19, 1999 CONTINUED**

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Civil H. D. ARNAIZ CORPORATION et al.
No. v.
C029835 WILLIAM LYON COMPANY, ETC. et al.

Cause called. Richard M. Archbold, of Askew & Archbold argued for Defendants-Appellants. Richard E. Rader, of Rader, Rader, Goulart & Gray argued for Plaintiffs-Respondents. Cause submitted.

At 11:20 a.m., court recessed. At 2:02 p.m., the court reconvened with the same panel except Associate Justice Davis in place of Associate Justice Morrison.

Crim. THE PEOPLE
No. v.
C028889 STEPHEN LEON FELECIANA

Cause called. Diana T. Frappier, court appointed counsel argued for Defendant-Appellant. Craig S. Meyers, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Crim. THE PEOPLE
No. v.
C028700 JON BRIAN RIDLEY

Roberta Simon, court appointed counsel argued for Defendant-Appellant. Eric L. Christoffersen, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Court recessed at 3:00 p.m., until 9:30 a.m., Thursday, May 20, 1999.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDEESDAY, MAY 19, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C028309 DARRELL ANTHONY HOBBS

The case is remanded and the trial is instructed to strike the one-year enhancement under Penal Code section 667.5, subdivision (b) for the prior conviction for receiving stolen property and the one-year enhancement under Penal Code section 667.5, subdivision (e) for the second burglary conviction. The trial court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections. In all other respects, we affirm the judgment.

RAYE,, J.

We concur: NICHOLSON, Acting P.J.
 HULL, J.

Civil CHERI L. SIMMONS
No. v.
C031009 LOUISE LONGLEY

 JOHN BUCHANAN
Civil CHERI L. SIMMONS

No. v.
C032141 LOUISE LNOGLEY
 BY THE COURT:

The stipulation of parties for consolidation of the above cases is granted. The cases are ordered consolidated for all further appellate procedures except that they will retain their respective case numbers. Whenever documents are submitted for filing by the parties, an original must be presented for each case number; however, if copies of documents are required pursuant to the California Rules of Court, the parties need only submit a maximum of four. The cases will be considered for decision together.

Appellant's cross-appellant's and respondents' combined brief of Longley6 et al. Is due on or before June 25, 1999. The combined respondent's brief and appellant's reply brief of Simmons is due 30 days thereafter. The combined appellant's and cross-appellant's reply brief of Longley is due 20 days thereafter.

Dated: May 19, 1999

SCOTLAND, P.J.

MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
WEDNES DAY, MAY 19, 1999 CONTINUATION

13

Juvenile In re CEBRON N. et al., Persons Coming Under the Juvenile Court Law.
No .SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY
C031120 v.
 FAYE S.

The orders terminating appellant's parental rights are affirmed.
DAVIS, J.

We concur: SCOTLAND, P.J.
 KOLKEY, J.

THURSDAY, MAY 20, 1999

Civil ROBIN WILSON (Certified for Partial Publication)
No. v.
C027518 WAL-MART STORES, INC.
C027765

THE COURT:

It is ordered that the opinion filed herein on April 22, 1999, be modified in the following particular:

...

The judgment is affirmed. Plaintiff Wilson shall recover costs as the prevailing party in case No. C027518. Defendant Wal-Mart shall recover costs as the prevailing party in case No. C027765.

This modification changes the judgment.

Plaintiff's petition for rehearing is denied.

The opinion in the above entitled matter filed in April 22, 1999, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

FOR THE COURT:

HULL, J.
SCOTLAND, P.J.
MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, MAY 20, 1999 CONTINUED**

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At 9:30 a.m., the court met in the Library & Courts Building for a continuation of it's court calendar session.

PRESENT: SIMS, Acting Presiding Justice
 MORRISON, Associate Justice
 KOLKEY, Associate Justice

Bailiff: Palmer
Calendar called.

Civil JAMES CLARK
No. v.
C028725 AGI PUBLISHING, INC.

Cause called. Mark D. Magarian, of Heyman, Kerkorian & Magarian argued for Defendant-Respondent with additional citations. Allen Junker argued for Plaintiff-Appellant. Cause submitted.

Civil KENT WILLIAMS et al.
No. v.
C029483 CALIFORNIA PHYSICIANS' SERVICE

Cause called. Douglas deVries, of Mart & deVries argued for Plaintiffs-X-Defendants-Appellants. Mark E. Reagan, of Foley & Lardner argued for Defendant-X-Complainant-Respondent.

Court recessed at 10:39 a.m., until 9:30 a.m., Friday, May 21, 1999.

Civil DONALD R. EATON
No. v.
C031586 CITY OF GRASS VALLEY
BY THE COURT:

The court having examined the record on appeal and having determined that the order appealed from is non-appealable, the appeal filed January 6, 1999, is dismissed. (See *Modica v. Merin* (1991) 234 Cal. App. 3d 1072.)

Dated: May 20, 1999

SCOTLAND, P.J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, MAY 20, 1999 CONTINUED**

15

Crim. THE PEOPLE (Not for Publication)

No. v.

C029833 LAWRENCE ANTHONY STONE

THE COURT:

The opinion of this court filed April 23, 1999, in the above entitled case is modified as follows:

...

The modification effects no change in the judgment.

The petition for rehearing is denied.

BY THE COURT:

BLEASE, Acting P.J.

RAYE, J.

HULL, J.

Civil ROBIN WILSON (Certified for Partial Publication)

No. v.

C027518 WAL-MART STORES, INC.

C027765

THE COURT:

It is ordered that the opinion filed herein on April 22, 1999. Be modified in the following particulars:

...

The judgment is affirmed. Plaintiff Wilson shall recover costs as the prevailing party in case No. C027518. Defendant Wal-Mart shall recover costs as the prevailing party in case No. C027765.

This modification changes judgment.

Plaintiff's petition for rehearing is denied.

The opinion in the above entitled matter filed on April 1999, was certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is ordered.

FOR THE COURT:

HULL, J.

SCOTLAND, P.J.

MORRISON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, MAY 20, 1999 CONTINUED**

16

Juvenile In re CEBRON N. et al., Persons Coming Under the Juvenile Court Law.
No. v.
C031120 FAYE S.

The orders terminating appellant's parental rights are affirmed.
DAVIS, J.

We concur: SCOTLAND, P.J.
 KOLKEY, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C030135 MAC J. GILLARD

The parole fine of \$2,400 imposed pursuant to section 12302.45 is stricken. The sex offense fine of \$200 imposed pursuant to section 290.3 is reduced to \$100. The trial court is ordered to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections. As modified, the judgment is affirmed.

DAVIS, J.

We concur: SCOTLAND, P.J.
 KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, MAY 20, 1999 CONTINUED**

17

Crim. THE PEOPLE (Not for Publication)

No. v.

C028448 VENG YOU TANG

The judgment is modified by striking the convictions on counts 7 and 8, and by staying the sentence on count 1 pursuant to section 654. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.

RAYE, J.

We concur: BLEASE, Acting P.J.
MORRISON, J.

Civil MELODY VON GLAHN (Not for Publication)

No. v.

C030486 RAMONA VERBECK

The order to inter is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.
RAYE, J.

Juvenile In re STEPHANIE L., a Person Coming Under the Juvenile Court Law.

No. v. (Not for Publication)

C030962 STEVEN L.

The October 23, 1999 orders of the Juvenile court are affirmed.

KOLKEY, J.

We concur: SIMS, Acting P.J.
CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)

No. v.

C026859 PATRICK LEE O'KANE

The judgment is affirmed.

SIMS, Acting P.J.

We concur: MORRISON, J.
CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
THURSDAY, MAY 20, 1999 CONTINUED**

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Crim. THE PEOPLE (Not for Publication)
No. v.
C027616 GREGORY KEVIN TOLBERT
The judgment is affirmed.
DAVIS, J.
We concur : SIMS, Acting P.J.
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C029610 MATTHEW LEE JASPER
The judgment is affirmed.
HULL, J.
We concur: SCOTLAND, P.J.
KOLKEY, J.

FRIDAY, MAY 21, 1999

Crim. THE PEOPLE
No. v.
C025305 WILLIAM JOSEPH BRYAN
BY THE COURT:
Appellant's petition for rehearing is denied.
Dated: MAY 21, 1999
RAYE, Acting P.J.

At 9:29 a.m., the court met in the Library & Courts Building for a continuation of court calendar session.

PRESENT: SIMS, Acting Presiding Justice
NICHOLSON, Associate Justice
CALLAHAN, Associate Justice

Bailiff: Rios
Calendar called.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
FRIDAY, MAY 21, 1999 CONTINUED**

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Civil TONY SMEATION
No. v.
C028795 FIDELITY NATIONAL TITLE

Cause called. Larry Caldwell, of Robbins, Robbins & Caldwell argued for Plaintiff-Appellant. Peter Brian Bothel, of Bothel & Long argued for Defendant-Respondent with additional citations. Cause submitted.

Civil WILLIAM KENDALL STAFFORD
No. v.
C029884 KAIRON GNOTHI CLUB

Cause called. Steven P. Belzer, of Livingston & Mattesich Robert I. Harris argued for Defendant-Respondent. Cause submitted.

At 10:24 a.m., court recessed. At 10:47 a.m., court reconvened with Acting Presiding Justice Blease, Associate Justice Nicholson, and Associate Justice Morrison.

Crim. THE PEOPLE
No .v.
C030425 MACEO MCKINNEY, JR.

Cause called. Michael Willemsen, court appointed counsel argued for Defendant-Appellant. Thomas Y. Shigemoto, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 10:24 a.m., court recessed. At 10:47 a.m., court reconvened with Acting Presiding Justice Sims, Associate Justice Morrison and Associate Justice Hull.

Civil ARNOLD NARANJO
No. v.
C027804 GARNICA CORPORATION et al.

Cause called. Philip E. Carey argued for Plaintiffs-Appellants. Nora E. Dwyer, of Diepenbrock & Costa argued for Defendants-Respondents. Cause submitted.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
FRIDAY, MAY 21, 1999CONTINUED**

20

Court recessed at 11:21 a.m., until 9:30 a.m., Monday, May 24, 1999.

Crim. No. C026522	THE PEOPLE v. DEBORAH JEAN OLCOTT The judgment is affirmed. We concur: MORRISON, J. CALLAHAN, J.	(Not for Publication) SIMS, Acting P.J.
Juvenile No.	In re ANDREA A. et al., Persons Coming Under the Juvenile Court Law. (Not for Publication) HEALTH & HUMAN SERVICES v. RITA H. The orders of juvenile court are affirmed. We concur: SCOTLAND, P.J. CALLAHAN, J.	 NICHOLSON, J.

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
FRIDAY, MAY 21, 1999CONTINUED**

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Crim. STHE PEOPLE (Not for Publication)

No. v.

C029515 DANIEL AARON CUCARO

THE COURT:

It is ordered that the opinion filed herein on May 10, 1999, be modified as follows:

1. On page two, first full paragraph, the last sentence should be deleted. In it's place, substitute the following:

“We find no merit in the first and third contentions, but pursuant to this court’s decision in *People v. Smith* (1997) 57 Cal. App. 4th 1470, we reverse defendant’s conviction for assault with a firearm.”

2. ...

3. ...

4. ...

“The assault instruction omitted the subjective metal element of the offense and may have short-circuited the jury’s consideration of the gist of defendant’s defense. Accordingly, the error was not harmless beyond a reasonable doubt. We reverse the defendant’s conviction for assault with a firearm.”

THE COURT:

NICHOLSON, Acting P.J.

MORRISON, J.

KOLKEY, J.